

REMARKS

Responsive to the Official Action dated September 10th, 2004, Applicants elect, with traverse, Group I (claims 1 to 17, 48 to 52, 68, 69, 78 (partially), 79 and 81 to 83), for further prosecution. Restriction to one of the following inventions has been required under 35 U.S.C. § 121 :

- I. Claims 1-17, 48-52, 68, 69, 78 (partially), 79, 81-83, drawn to polynucleotide, vectors, and host cells, classified in class 435, subclass 69.1;
- II. Claims 18-47, drawn to polypeptides, classified in class 530, subclass 350;
- III. Claim 53-60, drawn to a method of cancer treatment using T lymphocytes, classified in class 424, subclass 93.1;
- IV. Claims 61-64, drawn to a method of modulating an immune response in a mammal using a transfected cell, classified in class 514, subclass 44;
- V. Claims 65-67, drawn to a method of treating an autoimmune disease using antisense therapy, classified in class 514, subclass 44;
- VI. Claims 70-73, 78 (partially), drawn to an antibody and a kit comprising said antibody, classified in class 530, subclass 387.1;
- VII. Claims 74-77, drawn to a method of diagnosing a cancer in a patient using an antibody, classified in class 435, subclass 7.1;
- VIII. Claim 80, drawn to a transgenic animal, classified in class 800, subclass 8.

Applicants elect, with traverse, Group I, claims 1 to 17, 48 to 52, 68, 69, 78 (partially), 79 and 81 to 83 for further prosecution. Applicants have withdrawn, with traverse, Invention II, corresponding to Claims 18-47, Invention III, corresponding to Claims 53-60, Invention IV, corresponding to 61-64, Invention V, corresponding to Claims 65-67, Invention VI, corresponding to Claims 70-73, and 78 (partially), Invention VII, corresponding to Claims 74-77, and Invention VIII, corresponding to Claim 80.

The Applicants respectfully traverse the restriction requirement on the ground that unity of invention does exist between Groups I and II because there is a technical relationship that involves the same special technical features *viz.* human SIMP (Source of Immunodominant MHC-associated Peptides) proteins, fragments and nucleic acids and their

use in immune response modulation for cancer therapy. It is this technical feature that defines the contribution which both Groups I and II, taken as a whole, makes over the prior art.

Applicants further traverse the Restriction Requirement on the ground that the Office has failed to follow MPEP guidelines for making a lack of unity of invention requirement between restricted Groups. MPEP §1893.03(d) states:

"When making a lack of unity of invention requirement, the Examiner must 1) list different groups of claims and 2) explain why each group lacks unity with each other group (i.e., why there is no single general inventive concept) specifically describing the unique special technical feature in each group."(Emphasis is ours)

The Examiner has not explained why each group lacks unity with each other group and has not specifically and sufficiently described the unique special technical features in each group to justify the conclusion of a lack of unity of invention.

The Applicants submit that Group II (related to polypeptide) should be part of Group I (related to polynucleotide, vector and host cell) since the polypeptide encodes the polynucleotide claimed in Group I of the present application. Therefore, there exists a close structural relationship, i.e. unity of invention, between the elements of Group I and the polypeptide of Group II. Furthermore, the Applicants respectfully submit that a polypeptide and its corresponding polynucleotide should belong to the same group of invention.

Moreover, the Applicants respectfully remind to the Examiner that the MPEP in §803 states as follows:

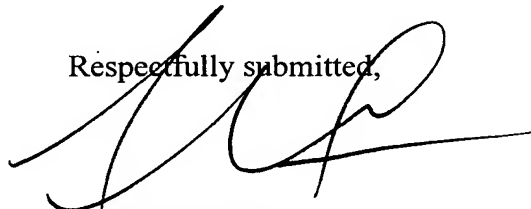
"If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

Applicants respectfully submit that a search of all the claims included in Groups I and II, would not impose a serious burden on the Office.

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In view of the above, Applicants respectfully submit that the present restriction requirement is improper, and that the restriction requirement be withdrawn with regard to Groups I and II. The above-identified application is now in condition for examination on the merits, and an early notice of such action is earnestly solicited.

Respectfully submitted,



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